

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MONDIS TECHNOLOGY, LTD * Civil Docket No.
 * 2:07-CV-565
VS. * Marshall, Texas
 *
 * June 23, 2011
LG ELECTRONICS, INC., ET AL * 8:30 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE T. JOHN WARD
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

Morning, Ladies and Gentlemen.

Morning, Counsel. Y'all ready to
proceed?

MR. GARDNER: Yes, Your Honor.

THE COURT: All right. Let's proceed.

Mr. Donaldson, you ready?

THE WITNESS: Yes, sir.

THE COURT: Good. Let's go.

MR. GARDNER: So Bryan, can you pull up
202-02, please?

RICHARD L. DONALDSON, DEFENDANTS' WITNESS,

PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GARDNER:

Q. Good morning, Mr. Donaldson.

A. Good morning.

Q. So yesterday when we left, I believe you were
going to explain how you calculated the total amounts
shown here?

A. Yes, sir.

1 Q. In making these calculations, did you assume
2 that the patent claims were valid and infringed?

3 A. Yes, I did.

4 Q. Now --

5 MR. GARDNER: Bryan, will you go to
6 200-02, please?

7 Q. (By Mr. Gardner) So I want to take the 1
8 percent royalty as an example and have you explain the
9 calculation you performed. So from 2008 forward, I see
10 that you list both patent families, both the '090 and
11 the '812.

12 During that time period, would the full 1
13 percent rate apply?

14 A. Yes, sir, it would.

15 Q. And then we have the period from April 2005
16 until January 2008 and I see that only the '090 is in
17 that time period. Would the full rate still apply
18 during that time period?

19 A. No, sir, I do not believe it would.

20 Q. And what royalty rate do you think is
21 applicable during that time period?

22 A. I believe a rate of using the example of 1
23 percent for the entire patent portfolio, I believe a
24 rate of 0.5 percent would be appropriate.

25 Q. And why is that?

1 A. Because there's only one of the two patent
2 families that exist during that period of time.

3 Q. So how did you come to select the 0.5 or half
4 of the -- the 1 percent?

5 A. Well, there were two reasons. One, I relied
6 upon the testimony of Dr. Rhyne who looked at the
7 technical contribution of each of the two patent
8 families and concluded that they -- from a technical
9 point of view they were basically the same. And I also
10 relied upon my own knowledge of licensing of patents in
11 this industry that relate to standards and the practice
12 being that if you have two patents both of which are
13 necessary for a standard, they are normally considered
14 to be of equal value.

15 Q. Can you explain to the jury how you actually
16 made the calculation in order to come up with the
17 numbers that -- that we started off with?

18 A. Well, sure. It's just straight math. During
19 the period from 2005 to 2008 when only the '090 patent
20 family existed, there's a 2.4 billion dollar revenue
21 base. I multiplied that 2.4 billion times 0.5 percent
22 and came up with a royalty for that period of time.

23 Then going to the second period of time where
24 both patent families existed, there was a 1.7 billion
25 royalty base, I multiplied that times 1 percent and then

1 I added those two royalty numbers together for the total
2 royalty that we saw on the prior chart.

3 MR. GARDNER: So Bryan, will you go back
4 to 202-02, please.

5 Q. (By Mr. Gardner) Are these the numbers that
6 you're referring to?

7 A. Yes. In -- in the bottom one where we use the
8 rate of 1 percent would result in 29.6 million dollars
9 of royalty. And if you were to use a 0.5 percent as the
10 maximum royalty rate, it would be 15 million. And then
11 for the total royalty for all the patents in this suit,
12 you would add the \$400,000 dollars for TVs.

13 Q. So for this chart, does this reflect your
14 opinion regarding the appropriate royalty if the HP
15 sales are excluded or covered by the HP license
16 agreement?

17 A. Yes, sir, it does.

18 Q. Now, did you also perform this same type of
19 calculation if the HP sales are included, meaning
20 they're -- and not covered if the jury determines that
21 they're not covered by the HP license agreement?

22 A. Yes, I also did that calculation.

23 Q. All right.

24 MR. GARDNER: Bryan, can you pull up
25 202-01, please?

1 Q. (By Mr. Gardner) And can you tell the jury
2 what, in your opinion, the appropriate royalty would --
3 rate would be or the appropriate royalty would be if HP
4 sales are included?

5 A. Yes. Again, if you use a royalty rate,
6 maximum royalty rate of 0.5 percent, that would result
7 in royalties of 20.8 million dollars. And if you use
8 the 1 percent maximum royalty rate, the amount for
9 monitors would be 41.5 million, and to each of those you
10 would add the \$400,000 for the televisions.

11 MR. GARDNER: You can take that down,
12 Bryan.

13 And pass the witness, Your Honor.

14 THE COURT: Cross-examination.

15 MR. BLACK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BLACK:

18 Q. Okay. All right. Mr. Donaldson, you're the
19 third damages expert to testify in this case, and I like
20 to identify at least the points of agreement among the
21 damages experts; is that a fair place to start?

22 A. It's fine with me, sir.

23 Q. Great. All the damages experts agree today
24 that the royalty base, the total base of possible
25 infringing products in this case from Innolux is 5.6

1 billion dollars, correct?

2 A. I would agree with that.

3 Q. Are you aware -- were you here when Dr. Magee
4 testified?

5 A. I was.

6 Q. Did you hear all the trouble he had to go
7 through in order to figure out that 1.3 billion dollars
8 in sales of products which were coming into the United
9 States; did you hear that testimony?

10 A. I heard his testimony.

11 Q. You heard how he had to go through -- his team
12 had to go through 13 million pages of documents to
13 ferret out the invoices and find the concealed sales;
14 did you hear that?

15 A. I heard his testimony?

16 Q. And then he prepared a report identifying that
17 1.3 billion dollars in sales in the royalty base and you
18 agree with him that it's part of the royalty base,
19 right?

20 A. I do.

21 Q. Now, you claimed a moment ago that sales to HP
22 should be excluded, right, from the royalty base?

23 A. I said there's two possibilities. HP sales
24 are included or excluded and I calculated royalties
25 under both circumstances.

1 Q. Oh, you don't know whether the HP sales should
2 be included or not included?

3 A. I have not formed an opinion on that.

4 Q. You are a licensing expert, correct?

5 A. I am.

6 Q. You said that you would negotiate hundreds of
7 agreements for Texas Instruments, right?

8 A. That is correct.

9 Q. Are you familiar with the term have-made
10 rights?

11 A. I sure am.

12 Q. What's a have-made right?

13 A. It's a provision where a patent owner can
14 permit a licensee to -- such as Hewlett-Packard in this
15 case, to have products made for its own benefit by some
16 other person, such as an Innolux.

17 Q. And those types of agreements, when those
18 rights are granted, they're carefully negotiated,
19 correct?

20 A. Most of the time, they are.

21 Q. Yeah. It's a little bit of a hot button in
22 patent licensing to give have-made rights, isn't it?

23 A. It is today, yes.

24 Q. Yes. And it was in the HP agreement, which
25 you reviewed as part of your report.

1 MR. BLACK: Could we put up 1096, Page 5,
2 please?

3 Q. (By Mr. Black) This is the HP agreement; do
4 you recognize it? You referred to it in your report.
5 Do you recognize this agreement, sir?

6 A. Yes, sir, I do.

7 MR. BLACK: Would you please blow up
8 Section 2.05?

9 Q. (By Mr. Black) You see that provision, the
10 license granted by a party to have licensed products
11 made by a third-party manufacturer; do you see that?

12 A. Yes, I see that.

13 Q. That's the have-made provision of this
14 agreement, right?

15 A. Yes, it is.

16 Q. And it has three exceptions, doesn't it?

17 A. That is correct.

18 Q. And if any one of the exceptions applies, the
19 HP products are not licensed, correct?

20 A. That is correct.

21 Q. And it's -- and the burden of proof on license
22 is on the Defendant, right?

23 A. I believe that's my understanding of the law.

24 Q. Would you look at the -- Section A says:
25 Notwithstanding the foregoing?

1 MR. BLACK: And go down to the next --
2 next -- to the end, one more line, right there. Right
3 there.

4 Q. (By Mr. Black) Notwithstanding the foregoing,
5 a request from the licensee that the third-party
6 manufacturer provide a product which merely complies
7 with an industry standard, for example, VESA is outside
8 the license; isn't that right?

9 A. There's also some additional language that you
10 haven't highlighted, but that's -- that's what it says.
11 It says what it says there, yes.

12 Q. Okay. And that means that if the request by
13 HP to Innolux is for product that complies with a VESA
14 standard, it's not covered by this have-made right;
15 isn't that right?

16 A. Without further guidance, I would agree with
17 you.

18 Q. Thank you. The second exception is that the
19 HP license does not apply to claims, the infringement of
20 which would necessarily occur because of compliance with
21 such specifications, do you see that?

22 A. I do.

23 Q. Do you have an opinion on whether or not the
24 products in this case necessarily occur and infringe
25 because of compliance with the VESA specifications?

1 A. I have a personal opinion, yes. I was not
2 asked to analyze this, and I did not provide an opinion
3 in my report and I'm not sure I'm permitted to give my
4 personal opinion. I haven't analyzed the agreement for
5 that purpose, but just looking at these words, would you
6 want me to give you my personal opinion?

7 Q. I don't think we want your personal opinion if
8 you haven't put it in your report, sir, but... You
9 haven't heard any evidence in this case from the
10 Defendants that they complied with this provision, have
11 you?

12 I'll withdraw the question.

13 Let's look at the third exception. This
14 exception says: That the have-made rights should not
15 apply to any products identical or substantially
16 identical to those manufactured or marketed by the
17 third-party manufacturer prior to licensee's furnishing
18 of said specifications.

19 Now, that actually would require a technical
20 opinion, wouldn't it, with respect to whether the
21 products were identical or substantially identical?

22 A. Yes, it would.

23 Q. And the Defendants have not offered any
24 technical opinion in this case on that subject, have
25 they?

1 A. I don't know.

2 Q. You -- you were sitting here for the trial,
3 you haven't heard any, right?

4 A. I'm not sure.

5 Q. Did you listen to Dr. Rhyne's testimony?

6 A. I did, and I listened to some of the
7 deposition testimony. It just -- I wasn't focused on
8 this issue. I'm just not sure whether there were
9 discussions about what the specifications of Hitachi's
10 products were -- I mean, of Hewlett-Packard's products.
11 I know there were, like, hundred page specifications and
12 I'm not sure whether they were -- and they were for
13 Hewlett-Packard only, so I'm not sure that -- I think
14 that would support a conclusion that they were not
15 substantially identical to other people because other
16 people couldn't use them.

17 Q. You have asked the jury to exclude from the
18 royalty base 1.5 billion dollars in sales because of the
19 HP license, right?

20 A. No, sir, that's not what I've asked.

21 Q. Okay. All right. Let's move on. Mr.
22 Donaldson, were the licensed patents licensed for an
23 establishing customary rate of 1 percent?

24 A. I believe they were.

25 Q. Okay. All right. Now, you referred in your

1 testimony to the TPV license; do you recall that?

2 A. Yes, sir.

3 Q. And you said that there were certain discounts
4 that were given to TPV; do you recall that?

5 A. Yes.

6 Q. And you selected the TPV license because it
7 was one of the handful of licenses which had -- where
8 the Defendant had received a discount, right?

9 A. That was one of the reasons I selected it.

10 Q. All right. And you put a chart up for the
11 jury --

12 MR. BLACK: And if we could go to the
13 ELMO, please. Thank you.

14 Q. (By Mr. Black) This was your chart on TPV,
15 right?

16 A. That is correct.

17 Q. And you're trying to tell the jury that Mondis
18 is asking for 10 times what TPV got, right? What -- not
19 what TPV got -- yeah, Mondis is asking for 10 times what
20 TPV got, right? That's what that big 10 X arrow is for,
21 right?

22 A. For royalties relating to past sales, that's
23 what this chart shows, yes, sir.

24 Q. Okay. Well, Mr. Donaldson, the .3 percent was
25 for past sales negotiated with TPV in November of 2004,

1 right?

2 A. That is correct.

3 Q. And the going-forward rate in the TPV license
4 that was calculated by Mr. Spiro was .5 percent, right?

5 A. That is correct.

6 Q. And the hypothetical negotiation between
7 Mondis and the Defendants in this case would have been
8 looking at a going-forward rate, correct?

9 A. That is correct.

10 Q. So therefore, the appropriate thing to do
11 would have been to start with the .5 percent rate, not
12 the .3 percent rate; isn't that correct?

13 A. That would also be inappropriate, I would not
14 disagree with that.

15 Q. Okay. Well then, let's just draw it on here.
16 So -- so that takes us to about .5 percent. Now, the
17 TPV agreement was the very first agreement in the
18 licensing program, correct?

19 A. I would have to go back and check. As far as
20 putting forth these standard rates, I believe that is
21 correct. I think there were some other licenses that
22 may have preceded it under which these patents were
23 licensed.

24 Q. Well, I'll put Mr. Mimms's slide up to refresh
25 your recollection, he's your co-damages expert for the

1 Defendants. This was his slide; do you recall that
2 slide?

3 A. I do.

4 Q. And the very first license on there, could you
5 show use -- tell us what that is?

6 A. What Mr. Mimms has shown is 2004. That still
7 doesn't resolve the question I had about whether there
8 may have been some other -- I'm -- I'm thinking -- I --
9 I'm not sure. I'd have to look at the -- at my report,
10 but I will accept that.

11 Q. Okay. That's the first license that Mr. Mimms
12 thought was relevant in -- looking at the licensing
13 program, right?

14 A. That is correct.

15 Q. And you don't disagree with Mr. Mimms, do you?
16 Or do you?

17 A. No, as far as his being the first license, I
18 will accept that.

19 Q. Okay.

20 A. Under these established rates, I'll put -- put
21 it --

22 Q. Now, you --

23 A. -- that way.

24 Q. -- now, you testified yesterday that one of
25 the things that -- that licensors do in license

1 negotiations is they try to incentivize people to take
2 licenses earlier by saying to people things like, well,
3 if you'll take a license now or shortly in the future
4 within some deadline, you'll get a better rate, a
5 discount; you said that, right?

6 A. That's common, yes.

7 Q. Yes. In fact, you offered that to folks when
8 you were working at TI from time to time, didn't you?

9 A. I'm not sure.

10 Q. Okay. Well, you said it's a common practice.
11 It may have been everybody else's common practice but
12 not yours?

13 A. That's very possible.

14 Q. Okay. Certainly nothing wrong with that
15 practice, right?

16 A. No.

17 Q. Okay. Now, TPV got a first-mover discount in
18 this case. Do you think Innolux is entitled to a
19 first-mover discount in this case, sir?

20 A. I'm not sure that I've seen any evidence that
21 TPV got a first-mover discount.

22 Q. Okay. Well, we did hear from Mr. Spiro; were
23 you here for that testimony?

24 A. I heard Mr. Spiro's testimony. I don't recall
25 him saying that this was -- there was a specific

1 discount for first mover.

2 Q. Well, let's just assume for the moment that
3 there is, okay?

4 A. Okay.

5 Q. That would take us up to 1 percent, right?

6 A. Not in my view, it wouldn't.

7 Q. Okay. Now, it's also important in evaluating
8 the -- a license agreement to look at all of the
9 consideration that is provided by the licensee to the
10 licensor, correct?

11 A. That is correct.

12 Q. And sometimes that consideration comes in the
13 form of money and very often some of that consideration
14 comes in the form of patents that the licensee licenses
15 back to the licensor, right?

16 A. It could, yes.

17 Q. And the TPV agreement is, in fact, such a
18 license where TPV licensed its patents to Hitachi; isn't
19 that right?

20 A. I believe that is correct.

21 Q. So we would have to account for that here when
22 looking at the value provided by TPV to Hitachi; isn't
23 that right?

24 A. If you could account for it, yes.

25 Q. Okay. Okay. And in addition to that

1 consideration, last week TPV agreed to pay 12 million
2 dollars out of these patents for televisions, correct?

3 A. That is correct.

4 Q. So that's additional consideration, right,
5 that TPV has agreed to pay on these patents, right?

6 A. That is correct.

7 Q. Okay. Okay. Now, with respect to the 3
8 percent number, that number is post-judgment assuming
9 that the patents are valid and infringed, right?

10 A. I don't agree with that.

11 Q. You don't agree that the 3 percent number for
12 the hypothetical negotiation that we're claiming is
13 based on an assumption of infringement and validity?

14 A. No.

15 Q. Okay. Well, the standard rate is 1 percent,
16 right?

17 A. That's the established rate, yes.

18 Q. All right. So we're over here.

19 I got a red pen. That was a mistake.

20 Now, the TPV rate over here is before a
21 finding of infringement and validity, right?

22 A. The TPV is an arm's length license negotiation
23 that did not go through litigation, that is correct.

24 Q. That is correct. And it's therefore not
25 subject to the assumption of a hundred percent validity

1 and a hundred percent infringement, right?

2 A. I would agree with that.

3 Q. You would? You would agree with that?

4 A. I would.

5 Q. Yes, okay. And the -- the 1 percent rate over
6 here for Dr. Magee, this rate right here would be the
7 right rate to look at to compare to this bar over here;
8 isn't that right?

9 A. No, sir. I think the right thing to look at
10 is what is a reasonable royalty when you consider all
11 the Georgia-Pacific factors before there is a lawsuit,
12 before there is any controversy over validity and
13 infringement, that's what we -- you're -- that's the
14 rules of doing a hypothetical negotiation.

15 So you don't talk about what if the patents
16 are valid and infringed in a post-litigation rate or
17 however you want to characterize it. That's not part of
18 the hypothetical negotiations.

19 Q. Your opinion in this case with respect to the
20 reasonable royalty is based on the assumption that the
21 hypothetical negotiation would involve a negotiation
22 over patents which are found to be valid and infringed;
23 isn't that right?

24 A. My assumption is that the patents are valid
25 and infringed, and that's what I start from. Again, I

1 start from that, looking at it in the year 2005.

2 Q. And a valid and infringed patent, one that's
3 been adjudicated by a Court to be valid and infringed,
4 it's a lot more valuable than one which has not gone
5 through the rigors of that process; isn't that right?

6 A. Under that hypothetical, I would say no, that
7 is not right.

8 Q. Your opinion as a licensing expert is that a
9 patent which has been validated is worth no more than a
10 patent which has not been validated?

11 A. You're comparing apples and oranges. If
12 you're looking at royalty rates that were established in
13 real life negotiations where the parties sat down at a
14 table and they consider all the risk, sure patent
15 validity might be an issue there and that would tend to
16 decrease a royalty rate.

17 But what's also an issue is an injunction.
18 They may be required to shut down their entire factory
19 if the patent's held valid and infringed. And in my
20 experience that has much more of an effect and would
21 cause the real life negotiated rate to be higher.
22 So if you're comparing that hypothetical negotiations
23 with a rate in real life negotiations, I don't agree
24 that the rate necessarily goes up because you assume the
25 patent's valid.

1 Q. Is a patent which is found to be valid more or
2 less valuable than a patent which has not been found to
3 be valid? Yes or no. Which one?

4 A. It depends upon the circumstances of what
5 you're looking at. If you're looking at everything
6 else --

7 Q. You don't know --

8 A. -- if everything --

9 Q. -- exact --

10 A. -- else is equal and if you're not in a
11 lawsuit and if you have no established business that
12 might be shut down, a patent that's been held to be
13 valid I would say should be more valuable than one where
14 there's a question about validity.

15 Q. Oh --

16 A. But if you're comparing it to a real life
17 negotiation where there's a threat of an injunction, I
18 do not agree with you.

19 Q. Well, somewhere in the middle of your answer I
20 think you said a patent that's valid would be more
21 valuable than a patent which has not been adjudicated to
22 be valid?

23 A. Only if you put it in the right circumstances.

24 Q. Like the hypothetical negotiation, right, sir?

25 A. Where there's no infringement, where there's

1 no factory that might be shut down, where you don't have
2 to lay people off, I would agree with you.

3 Q. Let's try it this way.

4 MR. BLACK: Your Honor, I'm going to move
5 the board if that's okay.

6 THE COURT: Yes.

7 Q. (By Mr. Black) All right. Mr. Donaldson,
8 let's talk about some concrete examples and see if we
9 can get some agreement. You were the head licensing
10 person at Texas Instruments, right?

11 A. For most of my career, yes.

12 Q. And you testified that you negotiated hundreds
13 of license agreements, right?

14 A. That is correct.

15 Q. And you developed licensing programs for Texas
16 Instruments which generated the company, I think you
17 testified yesterday, over a period of years, over four
18 billion dollars in royalties, right?

19 A. Actually it was four separate licensing
20 programs, but the royalty amount is correct.

21 Q. And that was just for, what, five years,
22 something like that, six years?

23 A. That spanned probably close to 10 years.

24 Q. Okay. So 400 million dollars a year roughly
25 in patent licensing royalties, correct?

1 A. That's what the math would show.

2 Q. And when we're talking about four billion
3 dollars, we're not talking about four billion dollars in
4 product sales multiplied by 1, 2, 3 percent, we're
5 talking about 400 million dollars in patent royalties,
6 right?

7 A. That is correct.

8 Q. Patents can be really valuable, right?

9 A. If you have Nobel Prize winning technology,
10 that's correct.

11 Q. What if you have technology that a company
12 like Innolux absolutely has to have in order to be in
13 business, it would be pretty valuable to Innolux,
14 wouldn't it?

15 A. I need more -- it could be valuable to them.

16 Q. Now, you were faced with the same problem that
17 Mr. Spiro has been faced with, which is having patents
18 that were widely infringed by companies in Asia,
19 correct?

20 A. That is correct.

21 Q. And Texas Instruments, partly at your request,
22 formed an inside task force to try to deal with that
23 problem, didn't they?

24 A. I'm not quite sure what you mean.

25 Q. Did you lead a licensing program to try to

1 obtain royalties from Asian companies for TI's
2 electronics technologies?

3 A. Yes, I did.

4 Q. And that was an important, important
5 initiative by Texas Instruments, right?

6 A. Yes, I believe it was.

7 Q. It was a market changing event, you were very
8 proud of it, right?

9 A. I would agree with that.

10 Q. Took you years to make that a success, didn't
11 you?

12 A. It did.

13 Q. A lot of time on planes traveling back and
14 forth, right?

15 A. Correct.

16 Q. Just like Mr. Spiro, right?

17 A. In some senses.

18 Q. Now, you developed a methodology when you were
19 negotiating for Texas Instruments that had to do a
20 cross-license negotiation, didn't you?

21 A. In that situation where we were dealing with
22 companies that had tens of thousands of patents, yes.

23 Q. And when you went to meet with these
24 companies, they would say all sorts of things to tell
25 you why they didn't need their technology; isn't that

1 right?

2 A. I'm not sure I agree with that
3 characterization.

4 Q. Well, you -- you -- it's certainly true that
5 you didn't just fly across the ocean, knock on
6 somebody's door, say please take a license to our
7 patents for millions of dollars and walk home with a
8 signed agreement, right?

9 A. It wasn't quite that easy, no.

10 Q. Yeah. In fact, you, on behalf of the Texas
11 Instruments, had negotiations with companies that
12 sometimes lasted for months and years, right?

13 A. That is correct.

14 Q. And sometimes you had to enforce the patents
15 through litigation, right?

16 A. That happened sometimes, also.

17 Q. Sometimes in this court, right?

18 A. That is correct.

19 Q. There's nothing wrong with that, right?

20 A. Nothing wrong with it.

21 Q. Now, licensees would say many things to you,
22 sometimes they told you, oh, your patents are no good,
23 right?

24 A. With respect to some of the patents, they may
25 say that.

1 Q. And sometimes they told you the patents are
2 infringed, right?

3 A. They would sometimes say that.

4 Q. And sometimes they told you, well, we just
5 can't pay that much money, right?

6 A. They would sometimes say that.

7 Q. And sometimes they'd say, oh, we don't have
8 the gross margins in order to be able to pay that rate.

9 A. I don't recall anyone saying that.

10 Q. You don't recall anyone ever saying they
11 didn't have enough margin in order to pay your royalty
12 rates?

13 A. Gross margins, no, I don't recall them saying
14 that.

15 Q. Any kind of margin?

16 A. Some people said they had low net profits, but
17 I don't recall anyone saying they didn't have sufficient
18 gross margins to pay.

19 Q. Did you ever hear anybody say, I can't take a
20 license because I don't want to be at a competitive
21 disadvantage to my competitors if they're not licensed?

22 A. That I heard from everyone.

23 Q. Right. Those are all things that Mr. Spiro
24 heard during this licensing program; isn't that right?

25 A. I would suspect.

1 Q. Now, you developed a methodology in which you
2 tried to sit down, if I understand it correctly, with
3 the potential licensee on the other side of the table
4 and identify three things with respect to a patent. You
5 gave a percentage number for validity; a percentage
6 number for infringement; and a percentage number for
7 importance of the patent. Isn't that right?

8 A. In the context of that methodology, that is
9 correct.

10 Q. Right. So we had --

11 MR. BLACK: We can take this down.

12 Q. (By Mr. Black) -- so you had an infringement
13 percentage, and you multiplied it by a validity
14 percentage, and you multiply that by an importance
15 percentage, you multiply that by a base rate, right?

16 A. At a very high level, that is correct.

17 Q. And the infringement percentage was from 0 to
18 1, and the validity percentage was from 0 to 1, and the
19 importance percentage was from 0 to 1, right?

20 A. That is correct.

21 Q. In all the years you had in negotiating these
22 agreements in the real world, not the hypothetical
23 negotiation, we are going to talk about that, but in the
24 real world, you never saw a patent that people could
25 agree with a hundred percent val; isn't that right?

1 A. That's not correct.

2 Q. Let me get your --

3 MR. BLACK: Your Honor, may I go back to
4 the table to get the deposition?

5 THE COURT: Yes.

6 Q. (By Mr. Black) Do you recall testifying at
7 your deposition, I asked you the question: So a patent
8 that received a one on infringement validity and
9 importance would have a rate of X percent, correct? If
10 there were such a patent?

11 Yes.

12 You were unable to find many of them, I
13 assume, in negotiations?

14 You said: I think we were unable to find many
15 of them.

16 Is that right? You never found the perfect
17 patent in a license negotiation, right?

18 A. But that wasn't your question to me.

19 Q. Did you ever find the perfect patent that got
20 a 1 on all three?

21 A. No.

22 Q. Okay.

23 A. But I did find patents that we gave a hundred
24 percent value to for validity and a hundred percent
25 value to for infringements.

1 Q. The average patent that you dealt with in
2 these negotiations was 50 percent, right, for
3 infringement, 50 percent for validity?

4 A. I'm sorry, would you repeat that?

5 Q. Let me try it this way, sir. Let's assume
6 that we're using your methodology, the one that you used
7 at Texas Instruments, okay? And you sit down with a
8 potential licensee and you guys discuss the infringement
9 of the patent and the licensee says it's not infringed
10 and you say it is infringed and you guys agree, all
11 right, let's call that one 50 percent, okay?

12 A. It wasn't that simple.

13 Q. Okay. Well, that's -- we don't -- the result
14 in many cases was to come up with a decision that you
15 consider it to be 50 percent, right?

16 A. Gosh, I don't know. It was all over the
17 board. It was -- some would be down to close to 0
18 percent, some would be higher. I -- I don't recall ever
19 doing a statistical analysis to say that they averaged
20 halfway in between.

21 Q. Sometimes it was 0, close to 0, sometimes it
22 was high. I'm just trying to pick a number in the
23 middle. 50 percent, is that okay?

24 A. Well, that's in the middle, but I'm not sure
25 that that's what this methodology resulted in.

1 Q. Well, let's just assume it's a 50-50 deal,
2 okay?

3 A. Well, you may assume that. I don't think
4 that's accurate.

5 Q. You never had a patent that you got -- that
6 was at 50-50?

7 A. Im sure there was a patent, more than one
8 patent, probably. I can't say that that's the average.

9 Q. Okay. And let's say that patent there's a
10 dispute over validity, okay, and everybody decides,
11 okay, you know what, we'll call that a 50-50 patent, all
12 right? All right?

13 A. All right.

14 Q. Now, let's assume, just to make it a little
15 bit simpler, that this is a really important patent that
16 the licensee can't live with without. So we're going to
17 give that a hundred percent. We're going to give it a
18 1, okay?

19 A. All right.

20 Q. Tell you what, you pick the license rate, sir.
21 We need to have a base rate. Would you pick a base rate
22 here?

23 A. This is going to vary, and you need to
24 understand each --

25 Q. Would you pick a base rate, please?

1 A. I can't pick -- I'm not sure I can pick a base
2 rate that wouldn't -- we did use a base rate --

3 Q. Don't --

4 A. -- for this.

5 Q. -- don't tell me what you used for Texas
6 Instruments.

7 A. Well, you're asking me to pick one and the
8 only thing I can tell you is what I did personally. The
9 base rate can be this --

10 Q. I'll tell you what, let me -- I don't -- I
11 don't want to get into Texas Instruments' rates.
12 We're -- we're not --

13 A. Okay. Then I can't --

14 Q. -- going --

15 A. -- pick a base rate.

16 Q. Okay. Well, we'll pick a hypothetical rate
17 just for the sake of argument and we'll call it 4
18 percent, okay? Now, what you would have done then is
19 you would have multiplied the 50 percent by the 50
20 percent by the 1, by the 4 percent, and in the real
21 world negotiation, you would have said that's a 1
22 percent patent. That's the math. 50 percent, times 50
23 percent, times 1, times 4 is 1 percent, right? Half
24 times a half is a quarter, quarter times 4 is 1?

25 A. I guess I'm missing something mathematically.

1 I mean, it's -- when you do that multiplication, it --
2 if you multiply those, you don't come out with 1. You
3 take .5 times .5 is .25 times --

4 Q. .25 times 1 is --

5 A. Okay. That's --

6 Q. Wait.

7 A. .5 percent times .5 percent is a quarter of a
8 percent, okay.

9 Q. Okay. So it's 1 percent. That's the real
10 world negotiation. Now, the --

11 A. Under your hypothetical.

12 Q. -- hypothetical -- the hypothetical
13 negotiation that you have to do in this case assumes
14 validity and assumes infringement, right?

15 A. That is correct.

16 Q. So we've got to change this 50 percent to a 1,
17 right, for infringement, because now we're assuming
18 infringement, right?

19 A. If you were going to apply that to a
20 hypothetical negotiation, yes.

21 Q. Which is what you're here to do, right?

22 A. But I'm here to apply rates under
23 Georgia-Pacific analysis of -- and this is not
24 transportable -- this was used as a proxy. Each patent
25 that we looked at represented at least a hundred

1 additional patents. This was the proxy shorthand way of
2 dealing with thousands of patents. It's not directly
3 transportable to two patents.

4 Q. Your -- your real world work at TI is not
5 transportable to your -- your testimony here today?

6 A. The type of analysis I can do is
7 transportable. The methodology used to evaluate tens of
8 thousands of patents is not directly transportable to
9 two patents is what I'm saying and there are
10 different --

11 Q. I'm just --

12 A. -- technologies.

13 Q. -- I'm just going to move on. It's been a
14 long trial. We're almost done here. I just want to get
15 this point in.

16 50 percent infringement, your negotiation,
17 hypothetical negotiation, 100 percent. Validity. 50
18 percent validity has to go to 100 percent, right, in the
19 hypothetical? You have to assume 100 percent validity,
20 correct?

21 A. Okay.

22 Q. The importance stays the same.

23 A. I disagree with that.

24 Q. The base rate stays the same. 1 times 1 times
25 1 times 4 is, can you tell us?

1 A. I disagree with you.

2 Q. 4 percent, right?

3 A. That's your math.

4 Q. So -- but it's correct, isn't it?

5 A. I don't agree with it.

6 Q. Okay. So in going from the Texas Instruments
7 methodology that you used when you were on the
8 patentholder side of this, by assuming that the patents
9 are valid and infringed, the rate goes from 1 percent to
10 4 percent?

11 A. That is absolutely wrong.

12 Q. You testified, Mr. Donaldson, that the patent
13 families in this case were of equal value, right?

14 A. That is correct.

15 Q. Yeah. And you're aware, are you not, that
16 many of the initial licenses, especially the ones that
17 were done in the 2005 period when the hypothetical
18 negotiation would have taken place with -- with Innolux,
19 were actually only for the '090 family of patents; isn't
20 that right?

21 A. Yes.

22 Q. Okay. So this is a little bit easier math,
23 but so if the rate was 1 percent for the '090 family,
24 right? Right?

25 A. Okay.

1 Q. And someone then needed a license to the '812
2 family, right?

3 A. Then that would say that people should have
4 been paying 2 percent and I've seen absolutely no
5 licenses of that case.

6 Q. Right. People should pay 2 percent. Now, you
7 saw that there were a number of licenses on -- where the
8 licensees agreed to pay 1.75 percent for DDC/CI
9 compliant monitors, right?

10 A. People had the choice of paying under two
11 options; either 1 percent or if they wanted to pay on
12 old devices at a .25 percent and more recent devices at
13 1.75, they could choose that. Mr. Spiro has testified
14 the licensee could choose whatever they wanted and 1
15 percent was the rate that he was asking.

16 So yeah, you can point to an agreement where
17 someone because of their business mix wanted to choose
18 that scenario, but it's still Mr. Spiro has said 1
19 percent was the established rate for using all the
20 patents that were being licensed and many of the
21 licenses had both patent families.

22 Q. Yes or no, did people pay 1.75 percent for
23 certain DDC/CI monitors?

24 A. When they chose the option, that was
25 equivalent to 1 percent of paying .25 percent for old

1 devices and .1 -- 1.75 or something of that nature for
2 newer devices, some people chose that approach, yes.

3 Q. Can you answer my question yes or no? Did
4 some --

5 A. I did --

6 Q. -- people pay 1.75 percent for DDC/CI
7 monitors, yes or no?

8 A. Yes, when they put it with that choice of the
9 option.

10 Q. 1.75 percent. And some of those people were
11 people who only paid for the '090 family; isn't that
12 right?

13 A. That's possible.

14 Q. Right. So if the '090 family is 1.75 percent
15 and the '812 family is worth the same, then maybe the
16 number should be 3.5 percent?

17 A. And if I found any license agreements that
18 anyone had ever entered into at that rate, I would agree
19 with you, but no one has.

20 MR. BLACK: Thank you, Mr. Donaldson.

21 Pass the witness.

22 MR. GARDNER: Bryan, can you pull up
23 DX1096? And can you go to 2.5 -- Section 2.5 -- or
24 2.05. Thanks.

25 Q. (By Mr. Gardner) So, Mr. Donaldson, I want

1 to -- I want to step back a little bit.

2 Mr. Black asked you a couple of questions
3 about this license agreement, and -- and the first
4 question, he -- I think he suggested that if any one of
5 these did not apply, then this -- this wouldn't be
6 applicable.

7 And do you see on the -- on Section B where it
8 says "and" at the second -- end of Section B here?

9 A. Yes, I do.

10 Q. And what does that -- what does that mean to
11 you?

12 A. That these are additive, really.

13 Q. Okay. So you heard Mr. Lin from HP testify
14 that H -- Hewlett-Packard's specifications were
15 confidential when they were provided to companies such
16 as Innolux or Hon Hai.

17 A. I did hear that, yes.

18 Q. And the specifications had a lot of
19 requirements, right? Hundreds of pages of a
20 specification, correct?

21 A. That's my understanding.

22 Q. And the exclusions and license agreement that
23 we have here, they show that the have-made rights
24 applied if the HP specification is merely in compliance
25 with the standard, right?

1 So if we look at the -- without -- or sorry
2 about that. At the -- at the top of the -- on
3 Section A, about the fourth line down, it says: Merely
4 complies with an industry standard.

5 A. Yes, I see that.

6 Q. All right. Would a specification that's
7 hundreds of pages long merely comply with an industry
8 standard?

9 A. Not in my opinion, no, and not in my
10 experience.

11 Q. Mr. Black also asked you some questions about
12 TI's licensing program. When TI went to litigation,
13 would they triple the royalty rate they requested from a
14 defendant?

15 A. I have never done that in any of the licenses
16 that I negotiated. I had an asking rate, and in some
17 cases, we actually had to go to -- through litigation,
18 sometimes even here in this court, and have a
19 determination of patent validity.

20 I never asked for a penalty. I never asked
21 that that person have to pay more than what other people
22 paid. In fact, they paid the same.

23 Q. And why wouldn't Texas Instruments ever triple
24 the royalty when they went to litigation?

25 A. Because that would be discriminating against a

1 company for -- just for wanting to satisfy themselves
2 that the patents were valid and infringed, and I didn't
3 think it was fair.

4 Q. We also heard Mr. Black ask you some questions
5 about this kind of divided rate. You could use the 0.25
6 percent and the 1.75 percent, and this comes out to the
7 blended rate of 1 percent. Why would a company select
8 the 0.25 percent and 1.75 percent option?

9 A. Well, a company would do that if they were
10 primarily making products that would qualify for the
11 0.25 percent. So they would save money by not having to
12 pay the 1 percent.

13 Q. So their effective license rate would actually
14 be lower than 1 percent.

15 A. Yes, I believe that's -- that -- that's what
16 they anticipated when they made that selection anyway.

17 Q. Companies don't select -- select an option in
18 order to pay more money, do they?

19 A. Not in my experience, no.

20 Q. And so just -- in your experience, hundreds of
21 licensing negotiations, 27 years doing this for a
22 living, would a company ever reasonably agree to pay
23 3 percent on something where everybody else in the
24 industry only paid 1 percent?

25 A. In this industry, my experience, no.

1 MR. GARDNER: Thank you, Mr. Donaldson.

2 THE COURT: All right. Mr. Donaldson,
3 you may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Who will be your next witness?

7 MR. BROGAN: I believe that's all of our
8 witnesses, Your Honor.

9 THE COURT: Rest? Innolux rests?

10 MR. BROGAN: We have some documents we
11 want to make sure to get in the record at some point.

12 THE COURT: Okay. Subject to that, you
13 rest?

14 MR. BROGAN: Yes, Your Honor.

15 THE COURT: Hon Hai?

16 MR. PARKER: Subject to the same thing,
17 Hon Hai rests, Your Honor.

18 THE COURT: All right. Are you ready to
19 go forward with your rebuttal case?

20 MR. BLACK: Yes, Your Honor.

21 MR. PLIES: Your Honor, Plaintiff calls
22 Joseph Lamm back to the stand.

23 THE COURT: Okay.

24 MR. PLIES: Mr. Lamm, thank you for --

25 THE COURT: Hold on a second. We're

1 going to need to take a break, a comfort break. Be back
2 ready to come back in the courtroom at 9:30, 9:30.

3 The jury may leave the courtroom.

4 COURT SECURITY OFFICER: All rise.

5 (Jury out.)

6 THE COURT: Court's in recess until 9:30.

7 I need to see counsel.

8 (Bench conference.)

9 THE COURT: We got a -- we got a signal
10 from the jury. That's -- well, I was going to -- how
11 much time do you think you've got left on the
12 Plaintiff's side?

13 MR. BROGAN: That's these guys.

14 MR. BLACK: I think -- what is it? About
15 half an hour?

16 MR. PLIES: Probably about 35, 40
17 minutes.

18 THE COURT: I wanted to make sure you
19 understood, you've got about 53 minutes, is what you've
20 actually got.

21 MR. BLACK: That's fine.

22 THE COURT: Okay. I just want everybody
23 to know that you're running out of time.

24 MR. PARKER: Good.

25 MR. BLACK: Yeah. I tell you what, Your

1 Honor. Will you give us a -- well, we'll keep track.

2 THE COURT: You've got 53 minutes.

3 MR. BLACK: Okay. We only need about --

4 MR. PARKER: Good.

5 MR. BROGAN: 52?

6 MR. BLACK: Just leave me enough time to
7 put Mr. Wedig on. He's going to be very brief.

8 THE COURT: Well, you've got 53 minutes.

9 MR. BLACK: Understood.

10 (Recess.)

11 COURT SECURITY OFFICER: All rise.

12 (Jury in.)

13 THE COURT: Please be seated.

14 JOSEPH LAMM, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

15 DIRECT EXAMINATION

16 BY MR. PLIES:

17 Q. Mr. Lamm, thanks for joining us again.

18 How many claim charts do you have for us
19 today?

20 A. Zero.

21 Q. Have you formed an opinion with respect to the
22 validity of the asserted '090 claims?

23 A. Yes, sir, I have.

24 Q. And what's your opinion?

25 A. That all of the claims that have been asserted

1 are valid.

2 Q. Now, you're not going to be providing opinions
3 with respect to the validity of the '812 patent claims;
4 is that correct?

5 A. Correct. Just the '090 patent.

6 Q. And is there a reason for that?

7 A. Yes, sir. Back when it was time to prepare
8 the rebuttal report of Dr. Rhyne regarding validity, I
9 was still -- I had just come off of analyzing monitors
10 for both TPV, LG, and Innolux and Hon Hai, and I think
11 something like 286 models.

12 And I had reviewed all the documentation for
13 almost 600 different models. And I needed to -- I just
14 didn't feel like I could focus on more than one, and so,
15 therefore, I asked for -- asked for help, so...

16 Q. Only so much -- only so much a man in a barn
17 can do, right?

18 A. Absolutely.

19 Q. What did you consider or review in forming
20 your validity opinions?

21 A. Well, first, I looked at all the prior art
22 that had been brought up, looked at Dr. Rhyne's report,
23 and then finally, I listened to the testimony that's
24 been given here in this court.

25 Q. And have you heard anything that's caused you

1 to rethink or change your opinions on validity?

2 A. No, sir.

3 Q. Now, after listening to the testimony this
4 week of Mr. Webb and Mr. Eccles, Mr. Lesh, Mr. Malden,
5 and Dr. Rhyne, do you have any observations concerning
6 the Defendants' invalidity assertions?

7 A. Well, yes, sir. It -- I'm kind of likening
8 this thing to a big puzzle. You know, you've got a lot
9 of pieces to this thing.

10 You've got com controller. You've got display
11 units. You've got ID information. You've got serial
12 numbers. You've got type, function, all of these kinds
13 of things that are described in the various claims. And
14 it takes all those pieces to -- to put this whole puzzle
15 together.

16 And if you look at all the prior art, none of
17 it does all of that, and it wasn't until Mr. Arai came
18 along and put all those pieces together to really --
19 really complete this puzzle.

20 Q. Now, which prior art references did Dr. Rhyne
21 principally rely upon when rendering his invalidity
22 opinion?

23 A. He relied on Mr. Webb, the Sony DDM, the big
24 monitor over in the corner, and then the Sawdon patent.

25 Q. Okay. Well, let's -- let's talk about each of

1 those one at a time. Let's take up the Webb system.

2 In your opinion, does the Webb system render
3 any of the asserted claims of the '090 patent invalid?

4 A. No, sir, it doesn't.

5 Q. Does it render any of those claims
6 anticipated?

7 A. No, sir.

8 Q. Does it render any of those claims obvious?

9 A. No, sir.

10 Q. What, if any, puzzle pieces, as you say, are
11 missing from the Webb reference?

12 A. Well, one of the big ones that's missing is
13 the communications controller. And I think we've got --
14 if I could have his --

15 MR. PLIES: Tracy, if you could put up
16 the demonstrative.

17 Q. (By Mr. Plies) And is this the demonstrative
18 that was used by Mr. Webb the other day at trial?

19 A. Yes, sir, it is.

20 Q. And you were indicating it was missing an
21 element?

22 A. Right. The first one it's missing is -- that
23 I mentioned was the com controller. Basically, if you
24 look over here on the left, it has this thing called a
25 personal computer, and that is hooked up to this little

1 block over here through this thing called control
2 signals, which he defined as being RS 232.

3 And I believe he also said at one point that
4 this was a UART and that UART is basically the universal
5 asynchronous receiver transmitter, and it's just a
6 basic -- a glorified way of saying it's a -- it's a part
7 that takes in eight data bits that come in one right
8 after another that groups them all together and presents
9 them to the processor eight bits at a time. It's a
10 pretty simple little device.

11 Q. Would one of ordinary skill in 1993 have
12 considered that to be a communication controller?

13 A. No, sir, I don't believe so.

14 Q. Now, you might recall Monday, I believe in
15 response to one of Mr. Brogan's questions, you had
16 indicated that if you have an I2C communication bus,
17 that you would need to have a communication controller.

18 And we do see here that there are some I2C
19 lines that Mr. Webb drew in the figure. Does that mean
20 that there's a communication controller?

21 A. Well, it means that this block up here labeled
22 communications controller really is one. And if you
23 notice, there's a couple of things that are different.
24 This thing is actually talking to two different devices
25 up here, but this device right here (indicates) doesn't

1 communicate any of that information over to the PC, and
2 that's what's required by the claims.

3 Q. Now, have you reviewed Mr. Webb's technical
4 documentation that was produced in this case?

5 A. Yes, sir, I have.

6 Q. And roughly how many pages of documentation is
7 that?

8 A. I don't remember the exact number, but
9 something like 3,000 pages.

10 Q. And did that include, for instance, some of
11 the documents that Mr. Webb was discussing when he was
12 testifying?

13 A. Right, and all of his source code for the
14 products and the calibration software and so forth.

15 Q. And when Mr. Webb testified, you heard him
16 initially identify the box as a UART and then him
17 expressing the term communications controller in
18 association with that box, did you?

19 A. Yes, sir, I did.

20 Q. And reviewing Mr. Webb's documentation, did
21 you find any instances where he had identified a UART as
22 a communication controller?

23 A. No, sir, I didn't.

24 Q. Can you explain a little bit more -- and
25 Mr. Webb did this a little bit -- about how the Webb

1 system was intended to be used?

2 A. Well, the Webb system was intended to be used
3 in a factory calibration environment. And that's
4 basically where you've got this thing sitting on a cart
5 at the end of a production line, and you've got this
6 expensive signal -- or pattern signal generator, along
7 with some cameras and a computer that does the
8 calibration.

9 And as the units come down the production
10 line, they hit this station, they get calibrated, and
11 then they proceed on to the next step, but -- and as
12 part of this, they have to make all these connections to
13 the unit.

14 The red -- you know, each of these signals are
15 separate. You've got red, green, blue horizontal and
16 vertical sync all coming in as -- with their own
17 connectors, and then you've got this port for doing the
18 calibration.

19 Q. And where was that port located on the monitor
20 that Mr. Webb talked about?

21 A. What he had described was the port was on the
22 front of the unit, and all of the video signals were on
23 the back of the unit.

24 And, you know, in a production environment,
25 the -- the case probably would not have been attached at

1 that time, but to get access to that port, you would
2 have to pry off a little plate and then make your
3 connection that way.

4 Q. So was the Webb system missing any additional
5 puzzle pieces as you call them?

6 A. Yes, sir. It was basically also missing the
7 plug-and-play piece.

8 Q. Now, Mr. Webb had indicated that the
9 calibration computer needed to know display unit
10 information from the display on the production line in
11 order to configure itself to output the correct signals
12 to the display on the manufacturing floor.

13 Do you have an opinion about what Mr. Webb
14 said about that?

15 A. Well, yes, I do. It kind of didn't make a lot
16 of sense to me. You know, I've seen a lot of production
17 lines, and the -- basically, what happens is, these
18 units come down the production line, and you're --
19 you're typically making a whole bunch of one item at a
20 time or one model number.

21 So you would be seeing, you know, hundreds or
22 thousands of that model, and then you would retool the
23 production line to be a different model, and you would,
24 you know, reconfigure everything.

25 So I don't see any need to read that

1 information out of every monitor and slow down the
2 production line in doing that.

3 Q. Would the calibration computer already know
4 what signals those monitors would need?

5 A. Right. That would be part of the tooling of
6 the production line, is to set all those parameters into
7 the calibration computer.

8 Q. Do you know if the Webb system was missing any
9 other puzzle pieces?

10 A. Well, it was also missing things like the
11 function and the type and several of the things that are
12 identified as being display unit information.

13 Q. Now, would there have been any motivation, in
14 your opinion, for someone to have taken the Webb system
15 and used it to send display unit information, such as ID
16 or type or timing data, to a computer to allow a
17 computer to configure the signals?

18 A. No, sir. Basically, the Webb system was what
19 we call a multisync monitor. And, you know, there's a
20 lot of activity in the industry at that time trying to
21 figure out how to make monitors be able to handle any
22 frequency that the computer wanted to generate.
23 And so Mr. Webb's solution was to make the monitor be
24 able to configure itself to whatever the computer was
25 sending.

1 In other words, it didn't care what the
2 computer was sending. It was going to do the best job
3 it could of putting up a picture.

4 Q. So the information that was stored in the
5 memory of the Webb system, what was that information
6 being used for?

7 A. What was described was information that would
8 be useful in a repair facility or something like that.
9 And it was basically information that the monitor used
10 internally to figure out how to put up a picture based
11 on whatever signals were coming in.

12 Q. And is that similar or not similar to plug and
13 play?

14 A. That's not at all -- that's the opposite of
15 plug and play, actually.

16 Q. Let's talk a little bit about the Sony DDM.
17 In your opinion, does the Sony DDM system render any of
18 the claims invalid?

19 A. No, sir.

20 Q. Does it render any of the asserted claims
21 anticipated?

22 A. No, sir.

23 Q. Does it render any of the anticipated claims
24 obvious?

25 A. No.

1 Q. Now, you've previously indicated that you're
2 familiar with the Sony DDM, which is the huge behemoth
3 we all see here in the corner of the courtroom. And I
4 was hoping you could elaborate a little bit more about
5 what your personal familiarity with that device is.

6 A. Okay. Well, I first started working on this
7 device in 1988, and I think I've added up about 15 years
8 of my career was spent basically designing graphics
9 controllers specifically designed for this product.

10 Q. And, again, could you remind the jury what a
11 graphics controller is?

12 A. Yeah. The graphics controller is that piece
13 of the -- of a total system that generates the video
14 signals and the sync signals to be able put up a picture
15 on this unit.

16 Q. So is it fair to say that that's the component
17 at the computer that generates the video and drive
18 signals for the monitor?

19 A. Yes, it is.

20 Q. Now, you indicated that you had worked with
21 the Sony DDM for about 15 years. Was that periodically,
22 month to month, did you see one once a week? How -- how
23 frequently were you working on Sony DDMs over that
24 15-year period?

25 A. I would say most of that time, it was on a

1 daily basis.

2 Q. And did you own any Sony DDM monitors?

3 A. I owned three of them.

4 Q. And you indicated developing the graphics
5 controllers. How many different graphics controllers
6 did you design for the Sony DDM?

7 A. Over that period of time, I think I counted up
8 that I designed something like six different graphics
9 controllers specifically for that unit.

10 Q. And did that graphics controller -- was that
11 designed to drive any other displays?

12 A. No. It was -- this monitor at that time was
13 unique. Sony was the only one producing a -- a
14 2,000-line color monitor. And so those graphics
15 controllers had no other purpose in life but other than
16 to drive that exact monitor.

17 Q. Now, we heard Mr. Lesh testify the other day
18 that Sony had sold 5,000 DDM monitors in the United
19 States. Do you know how many of your graphics
20 controllers for Sony DDM monitors were sold?

21 A. Yes, sir. Went back and looked at the
22 records, and I think I can say that we produced
23 something like 4300 graphics controllers for that
24 monitor.

25 Q. Did you sell any of your controllers to the

1 FAA?

2 A. Yes, sir. That was our biggest customer.

3 Q. So based upon your extensive knowledge of the
4 Sony DDM, were there any puzzle pieces, so to speak,
5 missing from the Sony DDM with respect to the asserted
6 claims?

7 A. Yes, sir, a couple of them. First is the
8 communications controller, and I believe if you look at
9 the slide that --

10 MR. PLIES: Tracy?

11 A. -- Mr. Eccles drew, if you look over here in
12 this drawing, the computer over here has this interface
13 over to what he calls a USART, which is based on the
14 same -- as a UART in this instance, and that
15 communications channel is another one like Mr. Webbs'
16 that was a point-to-point.

17 In other words, it's the only thing that
18 can -- it can come from here, and it only goes to here
19 (indicates). There's nothing going on where it has to
20 figure out which monitor it's talking to, you know, out
21 of a group of them or even which device within the
22 monitor that it might be talking to.

23 So there's no device addressing going on, like
24 an I2C bus or anything like that.

25 Q. (By Mr. Plies) Now, did you hear Mr. Eccles

1 identify that USART -- used the term communication
2 controller when he testified?

3 A. Right. I think it was -- again, it was
4 basically just a UART. It was not a communications
5 controller.

6 Q. Now, have you reviewed Mr. Eccles' article on
7 the Sony DDM?

8 A. Yes, I have.

9 Q. And have you reviewed Mr. Malden's articles on
10 the Sony DDM?

11 A. Yes, all of them.

12 Q. Have you reviewed technical documents on the
13 Sony DDM?

14 A. Yes, I have.

15 Q. And in any of that documentation did you see
16 any reference to that USART being called a communication
17 controller?

18 A. Yes, sir.

19 Q. Now, I was going to ask you, after listening
20 to the witnesses earlier this week talk about the Sony
21 DDM, which you worked on on a daily basis for 15 years,
22 did anything surprise you about the testimony you heard?

23 A. Well, I heard about a secret serial number for
24 the first time, and I must say that Sony was very good
25 at keeping secrets, because I never knew about it.

1 Q. Were you aware of the user area in the memory?

2 A. Yes, I was aware of the user area. That is
3 described in the interface manual.

4 Q. And did anything else surprise you that was
5 talked about concerning the Sony DDM?

6 A. Well, I think the -- there was an implication
7 that this was a plug-and-play unit, and I think nothing
8 can be further from the truth.

9 Q. And why do you say that?

10 A. Well, the graphics controller to drive this
11 unit is not an easy product to design. The requirements
12 for driving this monitor are very, very stringent. The
13 video clock rate on this thing has to be 357.181
14 megahertz, nothing more, nothing less.

15 The horizontal frequency has to be 128
16 kilohertz. And the vertical frequency has to be 60
17 hertz. And if you drive it with any other signals, you
18 don't get a picture on the screen.

19 And so the idea that the graphics controller
20 would somehow configure itself in the field, you know,
21 based on something it read out of the monitor is just --
22 doesn't happen.

23 Q. And, again, you indicated that you designed
24 the graphics controllers that drive these monitors,
25 correct?

1 A. Yeah. Those numbers are well engrained. I'll
2 probably go to the grave remembering those numbers.

3 Q. And what would your graphics controllers have
4 done if they had received an ID number or frequency data
5 that was sent to -- from the Sony DDM?

6 A. Well, we had nothing to do -- I mean, there
7 was just no need for that information.

8 Q. To your knowledge, did the FAA ever require ID
9 numbers to be put in the memory?

10 A. No, sir.

11 Q. Did anyone ever tell you that your display
12 adapter needed to be able to receive ID signals or
13 frequency data and use that kind of information from the
14 Sony DDM monitor?

15 A. No, sir.

16 Q. Now, you indicated earlier that you --

17 MR. PLIES: I'm sorry. Strike that.

18 Q. (By Mr. Plies) I believe Mr. Lesh had shown an
19 exhibit when he was testifying that actually showed that
20 you had took his training class.

21 Do you recall that?

22 A. Yes. I was -- you know, I wasn't exactly sure
23 when I had done that, but I believe he -- his slide
24 indicated that I was something like the seventh student
25 to have ever taken his class, and that was in, I

1 believe, 1989.

2 Q. And while you were working on the Sony DDM,
3 did you actually receive technical documentation from
4 Sony to enable you to do your work?

5 A. Yes. That was necessary for us to be able to
6 do the kind of work that we were doing.

7 Q. And was some of that documentation some of the
8 documentation that we've seen exhibited?

9 A. Yes. Basically consisted of -- they had a
10 thing called a service manual, which was all of the
11 internal operational characteristics. There were also
12 some other user kind of information.

13 And then finally, the big piece that really
14 helped us understand that unit even more was the -- what
15 they call the interface manual.

16 Q. And were any conditions placed on you for
17 receiving such technical documents from Sony?

18 A. Yes, sir. I was required to sign a
19 nondisclosure agreement to be able to get a copy of that
20 information.

21 Q. Now, we've heard a lot over the last few days
22 about storing an ID number or a serial number in the
23 memory of a monitor. Is storing an identification
24 number in a memory the '090 invention?

25 A. No. The '090 invention is much bigger than

1 that.

2 Q. If you could, what would -- how would you
3 characterize the '090 invention?

4 A. Well, the '090 invention is basically plug and
5 play. All the things that a host computer would need to
6 know to be able to configure the best possible picture
7 for the screen.

8 Q. And we talked about the EDID standard when you
9 were on the stand before. What kind of information does
10 that include?

11 A. It includes things like the identification
12 information, the characteristic information, like the
13 timing data; it includes function, type, serial number,
14 number of other fields.

15 Q. Have you seen any evidence to indicate that
16 the Patent Office agrees with you that the '090
17 invention is not simply limited to a monitor storing an
18 ID number?

19 A. Yes. I think Dr. Rhyne talked about the Mogi
20 patent and showed some of the things that -- in fact,
21 the Mogi reference talked about putting a serial number
22 and, I think, ID and so forth in a monitor.

23 But the Patent Office looked at that, I
24 believe on three occasions -- and it's even on the very
25 first issuance of the '090 patent -- and looked at that

1 very carefully and decided that nothing in the Mogi
2 reference would invalidate the patents.

3 Q. Let's talk about the third reference, Sawdon.
4 Does Sawdon render any of the claims invalid?

5 A. No, sir.

6 Q. Does it render any of the '090 claims
7 anticipated?

8 A. No, sir.

9 Q. Does it render any of the '090 claims obvious?

10 A. No, sir.

11 Q. Was Sawdon missing any of the puzzle pieces?

12 A. Yes, it was. It was missing the
13 identification information and --

14 MR. PLIES: Tracy, if we could put up
15 DX327. And if you'd go to the next page and one more,
16 another page. And if you could go to the top and
17 highlight on the right-hand column where it says, around
18 Line 9: Control data being unique to the display
19 device.

20 Q. (By Mr. Plies) And do you recall Dr. Rhyne
21 yesterday indicating that this passage indicated that
22 the -- there was information in identifying the display
23 unit?

24 A. I remember him characterizing it that way,
25 yes.

1 Q. And in your opinion, is this information that
2 identifies the display unit?

3 A. No, sir. If you actually just go down a few
4 lines, I believe it's maybe down around Line 21 or
5 something like that, they further define this -- I may
6 be wrong on that reference, but, anyway, the -- these --
7 this quote/unquote unique information is termed to be
8 more characteristic information.

9 Basically timing data is what they're really
10 talking about with this patent. And if you look at the,
11 you know, the stated goal of this patent, it's -- it is
12 basically characteristic information.

13 MR. PLIES: Tracy, if you could highlight
14 Line 22 and 23.

15 Q. (By Mr. Plies) Mr. Lamm, you indicated the
16 word timing. Is this the timing that you're referring
17 to?

18 A. Yeah, there it is. The control data basically
19 is the signal timing requirements, and that's what I was
20 referring to.

21 Q. Now, Mr. Lamm, on the '090 patent, which has
22 undergone re-examination, did you have an opportunity to
23 count up all the various prior art that was considered
24 by the Patent Office in issuing the '090 patent and its
25 re-exam certificate?

1 A. Yes, sir. I counted up all of the patents
2 that the Patent Office has looked at, and all of the --
3 the U.S. patents, I've counted up all the foreign
4 patents that the Patent Office looked at and counted up
5 all of the technical articles and published information
6 that the Patent Office had looked at, and it comes up to
7 401 different pieces of prior art that they looked at
8 once -- you know, in the process of the -- of proving
9 the validity of this patent.

10 Q. All right. Mr. Lamm, the Judge is going to
11 instruct the jury, hopefully in a few hours, on the law
12 with respect to validity, but do you have an
13 understanding of certain non-technical factors that are
14 relevant to non-obviousness?

15 A. Yes, sir, I do.

16 MR. PLIES: And, Tracy, can we put up
17 that slide, please?

18 Q. (By Mr. Plies) And can you please describe
19 what you're showing here in the first major bullet for
20 the jury.

21 A. Yeah. There's a couple of things that factor
22 into non-obviousness, and one of them is the commercial
23 success of the patent family. And basically what
24 they're looking at is: Is the patented technology
25 widely implemented?

1 And I think we've seen examples that the logo
2 program requires you to -- to practice these patents and
3 that there are standards for it. The plug-and-play
4 standard, the EDID standard, the EDDC standard all
5 incorporate these patents.

6 And the fact that the Defendants' customers
7 have said: We've got to have it. We have to have the
8 plug and play and EDID. And, therefore, the commercial
9 success of these things is basically due to the
10 invention.

11 Now, it's -- it's actually hard to find units
12 to compare with this, because everybody's got it, and if
13 you didn't have it, you would be relegated to very niche
14 market applications that -- you know, certainly not the
15 broad monitor marketplace.

16 Q. Now, what's the factor indicated in the third
17 major bullet?

18 A. Well, the other factor for obviousness is --
19 or for non-obviousness is: Is there an industry respect
20 for these patents?

21 And one of the -- you know, the big factor
22 here is: Have they been licensing it to other
23 companies, and have they been widely licensed?
24 And I think we can certainly all appreciate that when 17
25 of the 19 companies in the business have already taken a

1 license, they would certainly be widely licensed, and --
2 and those licenses account for quite a bit of money.

3 Q. Okay. Mr. Lamm, so let me just wrap this up.
4 In conclusion, what is your opinion as to the validity
5 of the asserted '090 claims?

6 A. That all of the claims that are asserted are
7 valid.

8 MR. PLIES: Thank you.

9 CROSS-EXAMINATION

10 BY MR. BROGAN:

11 Q. Mr. Lamm, how are you today?

12 A. Great. How are you?

13 Q. I'm good.

14 You talked there for a minute about the PTO
15 and a lot of information that the PTO's considered,
16 right?

17 A. Yes, sir.

18 Q. And sort of gave me the impression that you
19 think that the PTO is -- had access to everything that's
20 relevant and actually considered everything that's
21 relevant. Is that kind of what you're saying?

22 A. Yes, I believe so.

23 Q. Okay. Now, I got to be honest, I woke up in
24 the middle of the night last night thinking that very
25 same thing, and it made me start thinking about that

1 NIRC that Mr. Black talked about yesterday, that --
2 what's it called -- the notice of intent to issue
3 re-examination certificate.

4 And as I started thinking about that,
5 something hit me. It got me out of bed. And -- and I
6 went and I got out my notebooks, and I took a look at
7 that thing, and, you know, I found something kind of --
8 some things kind of interesting to me, and I'd like to
9 walk through some of those with you.

10 A. Okay.

11 MR. BROGAN: Bryan, can you bring up
12 that -- what we call that '090 IDS thing?

13 All right. And, Bryan, can you go --
14 just right here on the front page right here, can you
15 go -- highlight patent number there for everybody?

16 Q. (By Mr. Brogan) All right. So this is an
17 office action that, you know, in the ex parte
18 examination that deals with the '090 patent, right?

19 A. Yes.

20 Q. Okay.

21 MR. BROGAN: Bryan, can you go to Page 3?

22 Q. (By Mr. Brogan) And up at the top here, this
23 is -- at the very, very top.

24 MR. BROGAN: Right there at the very top.

25 Q. (By Mr. Brogan) See that? That's the notice

1 of intent to issue ex parte re-examination certificate,
2 right?

3 A. Yes.

4 Q. Okay. And it's -- if we go over, it was
5 issued by Examiner -- Christopher E. Lee, right?

6 A. Yes, sir.

7 Q. Okay. And here, I think, if we go down a
8 little, it says: The patent claims that are confirmed
9 are Claims 1 through 4, right? Up kind of here.

10 A. Yes, sir.

11 Q. And then it says -- down on No. 4, there's a
12 box that's checked, and it says: Note attached list of
13 references cited, you know, PTO.

14 Do you see that?

15 A. Yes, sir.

16 Q. That kind of jumped out at me as something
17 interesting, and we're going to get to that, but --

18 MR. BROGAN: Bryan, take me to your
19 notation 8 on this, if you would.

20 No. Page 8, your 8, just 8.

21 All right. Now, up here, starts: With
22 respect to. That paragraph right there: With respect
23 to.

24 Q. (By Mr. Brogan) Now, here -- and I'm going to
25 read this for the jury. It says: With respect to

1 Claims 1 to 26, it is noted that the claim limitations
2 of the respective claims, 1 and 3, are deemed patentable
3 over the prior art of record having raised substantially
4 any questions of patentability as the prior art fails to
5 teach or suggest that said display unit information
6 includes -- and here it is -- an identification number
7 for uniquely identifying a display unit.

8 Do you see that?

9 A. Yes, sir.

10 Q. Okay. Now, in your report, you've told us and
11 others that that -- an identification number for
12 uniquely identifying the display unit, that could be a
13 serial number, right?

14 A. Yes, sir.

15 Q. Okay. Now, you heard Mr. Webb testify that
16 his system included a serial number, right?

17 A. Yes, I heard him say that.

18 Q. All right. And you saw documents from
19 Mr. Webb that confirmed that he could read a serial
20 number out of his system, right?

21 A. Through the --

22 Q. Yeah. Through the --

23 A. Through the port, yeah.

24 Q. -- this port right here (indicates) that you
25 were talking about, right?

1 A. Yes, sir.

2 Q. Okay. And he called that a communication
3 controller, right?

4 A. Yes.

5 Q. Okay. Now, if we go back here --

6 MR. BROGAN: Bryan, go to the next page,
7 9, and just go to that signature block.

8 Q. (By Mr. Brogan) That's -- that's Christopher
9 E. Lee again, right?

10 A. Yes, sir.

11 Q. So initials C.E.L.?

12 A. Yes.

13 Q. Okay. Now, let's --

14 MR. BROGAN: Bryan, let's go to Page 13,
15 if you would. Actually, go to -- go to -- no. Go to
16 Page 15. Go to Page 15.

17 Okay. And go to the very bottom there,
18 very bottom there. All right. And highlight that and
19 bring that up for the jury.

20 Q. (By Mr. Brogan) Now, this is what woke me up
21 in the middle of the night. This says: All references
22 considered except where lined through.

23 Do you see that?

24 A. Yes, I do.

25 Q. Okay. And that would mean that if a reference

1 is on here and it's not lined through, then Examiner
2 Lee, who's got his initials here, C.E.L., then he
3 considered it, right?

4 A. I guess that's what that means.

5 Q. Okay.

6 MR. BROGAN: So, Bryan, go up on the
7 page, go up a little bit higher, and you'll see the --
8 the -- here it is right up here.

9 Q. (By Mr. Brogan) There's a patent. That's Mr.
10 Webb's patent there right, right?

11 A. Yes.

12 Q. Okay. And it's not lined through. And so it
13 means that, you know, Examiner Lee, he considered
14 Mr. Webb's patent, right?

15 A. Yes.

16 Q. Okay. And you've considered Mr. Webb's patent
17 as well, right?

18 A. Yes, I have.

19 Q. Okay. Now, Mr. Webb's patent doesn't talk
20 about storing a serial number in this memory, does it?
21 His patent doesn't do that, does it?

22 A. I don't recall seeing that in there, so no.

23 Q. Okay. So you wouldn't find this information
24 in his patent, would you?

25 A. No.

1 Q. Okay.

2 MR. BROGAN: Now, Bryan, if you'd take me
3 to Page 44. Go up here at the top, right up there,
4 right -- right there. Next one up. Next one up. Those
5 two guys, yeah. And bring that up. Bring that up.
6 That's really, really important. Okay. Bring it up and
7 highlight it for the jury.

8 Q. (By Mr. Brogan) Now, right here it says: The
9 PTO had access to Mr. Webb's declaration, right? You
10 know, his declaration setting forth his story about what
11 happened, right?

12 A. Yes.

13 Q. Okay. And it's got -- it's got a strike
14 through it, doesn't it?

15 A. Yes, it does.

16 Q. Okay. And based on, you know, the -- the
17 notation that Examiner Lee provided for us, that means
18 that Examiner Lee didn't consider Mr. Webb's
19 declaration, doesn't it?

20 A. I would have to assume that's what that means.

21 Q. Okay. And so what that means is that
22 Mr. Webb's testimony wasn't considered by the Patent
23 Office, doesn't it? That's what that means, doesn't it?

24 A. I guess so.

25 Q. And so that means that this jury sitting right

1 here is the first group that really gets to hear his
2 testimony, doesn't that, sir?

3 A. I guess so.

4 Q. All right. Now -- oh, yeah, let's -- just
5 go -- that thing right under -- right under Mr. Webb, it
6 says: Development proposal for multisync monitors,
7 Webb, blah, blah, blah. So that's another one of
8 Mr. Webb's technical documents that wasn't considered,
9 right?

10 A. By Mr. Lee.

11 Q. Right. And -- and so he -- at the PTO, in
12 this re-examination proceeding you've been talking
13 about, he axed through it and said that he didn't
14 consider it, right?

15 A. Correct.

16 Q. Right. And there's a reason at the PTO why,
17 you know, Mr. Lee wouldn't have done this. It's not
18 that he's doing anything wrong. It's just their
19 procedures say that in a re-exam, you can only consider
20 patents and printed publications, right?

21 A. I believe I heard Dr. Rhyne say that.

22 Q. Okay. And that's -- that's what's set forth
23 in the MPEP, right?

24 A. Yes.

25 Q. Okay. And so, you know, if -- if Mr. Webb's

1 declaration isn't a patent or printed publication, the
2 PTO rules say that the PTO can't, you know, consider
3 that, right?

4 A. Okay.

5 Q. And it means that these folks have to consider
6 it. That's the only place we can go to really get this
7 considered, right?

8 A. Okay.

9 Q. All right.

10 MR. BROGAN: Bryan, go down the page a
11 little bit down towards the bottom. Yeah, down here.
12 Preliminary Development Agreement, Sampo monitor --
13 Samsung 20-inch -- 21-inch monitor.

14 Q. (By Mr. Brogan) All right. Now, this is the
15 monitor that -- that Mr. Webb testified that he built,
16 created in 1989, and he sold to Sampo -- Samsung, right?

17 A. I believe that was his -- Samsung and
18 basically to Sony, also.

19 Q. Right. And now, down here he's got -- it
20 says: Preliminary Development Agreement prepared for
21 Display Labs. He did that with Samsung.

22 Down here, the 21-inch monitor that he built
23 for Samsung right there, that -- that information wasn't
24 considered. The system that he built for Samsung, as
25 shown by Examiner Lee's own initials and his own work,

1 wasn't considered at the PTO on this re-exam, was it,
2 sir?

3 A. I guess not.

4 Q. And, again, that means that this jury sitting
5 right here is the group that has to consider what it was
6 that he really didn't; isn't that -- isn't that right?

7 A. Correct.

8 Q. All right. Now, y'all have taken a fair
9 amount of time to talk about, you know, the DDM
10 materials being considered by the PTO and kind of played
11 that up, right?

12 A. We've identified a few items, yes.

13 Q. Okay. You've talked about that.

14 MR. BROGAN: Let's go over to Page 45
15 there, Bryan. And starting right about here
16 (indicates), highlight all that for our jurors, please,
17 and bring that up.

18 Q. (By Mr. Brogan) Now, at the very top of this
19 list, very top entry, sir, what does that say?

20 A. The Sony DDM Monitor Interface Manual, Third
21 Edition.

22 Q. Okay. Now, that's -- that's the interface
23 manual from Sony that talks about the DDM being able to
24 receive instructions to get information out of its
25 memory and send that stuff back, right?

1 A. It's the calibration interface primarily, but
2 yes.

3 Q. It talks about communications interface, tells
4 people how to interface with that monitor?

5 A. Correct.

6 Q. All right. And that's the one that talks
7 about the acknowledgement signals and the reception
8 confirmation signals, stuff like that?

9 A. Correct.

10 Q. All right. And it does -- that's a model that
11 tells you that you could out of -- well, here let me get
12 this. That's -- that's the manual that tells you that
13 you can upload and download entire files into and out of
14 this memory, right?

15 A. Correct.

16 Q. Using this computer over here, you can send
17 information over, ask for the file, whole file, all the
18 display settings, pull them all back over to the
19 computer, right?

20 A. Correct.

21 Q. Okay. And if you wanted to, you could upload
22 it back again?

23 A. Yes.

24 Q. Okay. Now, that -- not considered by the PTO,
25 right?

1 A. It has a line through it.

2 Q. Couldn't do it because it's not -- this system
3 wasn't a patented -- patent that was there and it wasn't
4 a printed publication there, so he's -- he's doing what
5 he can, it means -- what's that mean, again, sir? It
6 means that this jury is the only place where we can
7 actually have this considered, right? That's what it
8 means, right?

9 A. I'm not sure I know the patent procedures well
10 enough to be able to -- to really comment on that.

11 Q. Okay. All right. But you agree with me that
12 at least on re-exam, the PTO didn't consider this
13 interface manual, right?

14 A. Well, Mr. Lee said that he didn't.

15 Q. Okay. And -- and he was the one that ran this
16 re-exam, right, on the '090 patent?

17 A. He signed off on it eventually.

18 Q. Yeah. He's the guy that issued that -- that
19 NIRC. And his -- his reasons for issuing that NIRC were
20 that, again, nobody had a serial number, right? That's
21 what he said?

22 A. That was a statement that he put in the
23 document, yes, sir.

24 Q. Okay. So from our -- from our perspective,
25 the PTO has not yet considered the full story here, has

1 it, sir? It hasn't heard and considered all of Mr.
2 Webb's testimony, has it?

3 A. I don't think I can make that judgment of --
4 of what the PTO actually did.

5 Q. Okay. All right. Now, when -- when I took
6 your deposition in this matter, you remember that back
7 in -- I think it was -- where were we? Oh, we were in
8 Austin, right?

9 A. Yes, sir.

10 Q. Right. And I asked you a question about Mr.
11 Webb, I actually asked you a couple of them, right?

12 A. Yeah, he came up quite a bit.

13 Q. Yeah, right. I asked -- and one of the
14 questions I asked you was do you think he's an honest
15 guy, right, I asked you that question?

16 A. Yes, sir.

17 Q. Okay. And your response was, yeah, I have no
18 reason -- no reason doubt that, right?

19 A. Yeah, and I would state -- say that today.

20 Q. All right. And -- and I also -- and I -- and
21 I went further with you, we talked a little bit more
22 about him and I said, you -- I said: What do you think
23 Mr. Webb; I asked you that question, right?

24 A. Yes, sir.

25 Q. Okay. And -- and you said, I think he's an

1 extremely capable design engineer. Right, you said
2 that?

3 A. Yes.

4 Q. Okay. And then you went on and you said, I've
5 paid him a lot of money over the years to -- to tap into
6 that expertise, right?

7 A. Yes, sir.

8 Q. You did say that. Okay. And then you went on
9 and -- and you got to another sentence, which I think is
10 really important for this jury, and it's --

11 THE COURT: Well, Mr. Brogan, why don't
12 we use the deposition, probably just ask him the
13 questions --

14 MR. BROGAN: All right.

15 THE COURT: -- you know. We're not here
16 to listen to you read. I mean, you can ask him. If he
17 says --

18 MR. BROGAN: Okay.

19 THE COURT: -- something different,
20 then --

21 MR. BROGAN: Okay.

22 THE COURT: -- you can say didn't you
23 say something different, but --

24 Q. (By Mr. Brogan) Okay. Did you -- did you
25 say, sir, that certainly with respect to CRTs, I don't

1 think you find anybody that knew anything more about
2 CRTs in the country than he does?

3 A. Yes, I did say that.

4 Q. All right. Now, that same fellow, he says
5 that that's a communication controller, right? He said
6 that this -- this UART works with his processor in the
7 logic that two of them together, they act as a
8 communication controller; is that right?

9 A. That was his testimony, yes.

10 Q. That -- that was his testimony. Okay.

11 MR. BROGAN: Now Bryan, I'm going to --
12 I'm going to jump to those documents that we found that
13 relate to communication controllers; do you remember
14 those? And -- and can you go to No. 1, to the front
15 page of that? And just put up the title there.

16 Q. This is an article or -- that we found about
17 prototyping hardware and software environment for
18 teaching digital circuit design; do you see that?

19 A. I see that.

20 Q. All right.

21 MR. BROGAN: Now -- now Bryan, take me
22 to what's, I think, Page 375 of this article. And 375.
23 And then it says where it starts the communication
24 controller, could you highlight that for the jury,
25 please?

1 MR. PLIES: Your Honor?

2 THE COURT: Yes.

3 MR. PLIES: Can we approach?

4 THE COURT: Yeah.

5 (Bench conference.)

6 MR. PLIES: It's possible I'm mistaken,
7 but I don't believe this is either in evidence, and I
8 don't believe we've got it as a demonstrative.

9 MR. BROGAN: He says that's a
10 communication controller. He said that. This is
11 cross-examination and cause his --

12 THE COURT: I understand. What predicate
13 have you laid to throw that document up there?

14 MR. PLIES: It's not in Rhyne's report.

15 THE COURT: What predicate have you laid
16 to throw that document on the screen?

17 MR. BROGAN: I didn't, Your Honor.

18 THE COURT: Well, you know, I don't know
19 if anybody recognizes when it says it's authoritative or
20 anything. So let's keep it down.

21 MR. BROGAN: Thank you, Your Honor.

22 (Bench conference concluded.)

23 Q. (By Mr. Brogan) Let me -- let me just to be
24 clear just so we're here, with respect to the systems
25 that Mr. Webb designed and built and invested his life's

1 efforts in, who do you think knows more about this, him
2 or you?

3 A. Well, can I answer that other than a yes or no
4 answer?

5 THE COURT: Well, if you can't answer it
6 in a yes or no, then you can --

7 THE WITNESS: Okay.

8 THE COURT: If you say you can't, then
9 you -- you don't have to do something that you think is
10 not truthful.

11 THE WITNESS: Okay.

12 A. Mr. Webb's expertise is over in the deflection
13 and video circuits. I believe we saw contracts from
14 where Mr. Webb hired another individual to design the
15 code and the area around the processor.

16 There was some contracts that I -- that I
17 reviewed where, for whatever reason, he needed help with
18 that piece. And so I can probably point to the pieces
19 where -- that were Mr. Webb's expertise and that's, you
20 know, basically the CRT, the driver circuit up here, the
21 video circuit, and so forth. And he certainly knew what
22 needed to be done down here, but he had to rely on
23 somebody else to actually do that piece of it for him.

24 Q. (By Mr. Brogan) So that's -- that's your view
25 of it. Your view of it isn't that -- that he created

1 this MIMIC controller that solved all those problems
2 that allowed these circuits to be adjusted using this
3 computer? That -- that's not your understanding of what
4 he told the jury?

5 A. Well, the -- the MIMIC circuit is really this
6 stuff up here. It's the -- it's the pieces that control
7 this. There was still a microprocessor in there that
8 talked to that -- to that MIMIC IC.

9 MR. BROGAN: Bryan, can you pull up DX
10 353-006?

11 Q. (By Mr. Brogan) And this is -- this is, you
12 know, Display Labs' technical manual for their 19-inch
13 microcomputer controlled color monitor, right --

14 A. Correct.

15 Q. -- if we look at the front page? And now if
16 you go to this -- this page right here, that big chunk
17 right over here, the CPU and all that stuff, that's what
18 Mr. Webb spent so much time talking about right here,
19 isn't it, sir?

20 A. Yes, sir.

21 Q. Okay. Now, in this case a patent claim is not
22 valid if it covers something that was sold more than a
23 year prior to the patent filing date, right?

24 A. I'm sorry, could you repeat that, please?

25 Q. You -- you would -- would you agree with me

1 that if -- if a patent in, we'll call it 1992, a
2 patent -- patent application filed in 1992, okay? If
3 that patent covers a system that was sold in the United
4 States in 1989, then that patent claim would not be
5 valid, right?

6 A. I believe that's my understanding.

7 Q. Okay. Now, in this case, Mr. Webb has
8 testified that he sold his monitors to Samsung in 1989,
9 right?

10 A. Yes, I heard that.

11 Q. Okay. And he testified that he sold some more
12 to Sony in 1992, right?

13 A. Yes.

14 Q. Okay.

15 MR. BROGAN: Bryan, can you bring up
16 038-01?

17 Q. (By Mr. Brogan) So -- so if we're looking at
18 that, we've got the earliest filing date of the '090
19 family up here in red, right?

20 A. Correct.

21 Q. Okay. And -- and back here in 2/90 you got
22 the sale of his 21-inch monitor to Samsung. In '92 we
23 got this sale of this monitor to Sony, right?

24 A. Correct.

25 Q. Okay. So if the patent claims in the '090

1 patent family cover the system that Mr. Webb sold to
2 Sony and sold to Samsung on those days, then -- then
3 those claims wouldn't be valid, right?

4 A. Correct.

5 Q. You'd agree with that? Okay. Now --

6 MR. BROGAN: You can put that down,
7 Bryan.

8 Q. (By Mr. Brogan) And so if -- if this jury
9 were to find that the claims of the '090 patent cover
10 this system that was sold by Jim Webb to Samsung in
11 1989, then it should find that those claims are not
12 valid, right?

13 A. Correct.

14 Q. Okay. And you spent some time talking about
15 commercial success, right? I heard that when you were
16 on the stand.

17 A. Yes, sir.

18 Q. Okay. And that's -- that's an idea that
19 applies to an obviousness analysis, right?

20 A. Correct.

21 Q. Okay. Where you're combining, you know,
22 things together and putting them together, right? Now,
23 Dr. Rhyne testified yesterday that with respect to Webb,
24 we're not talking about an obviousness analysis, didn't
25 he?

1 A. I don't believe he did.

2 Q. Okay. He -- he said that they were talking
3 about an anticipation analysis, right?

4 A. Yes.

5 Q. Okay. And in an anticipation analysis, what
6 has to be done is that this jury has to figure out
7 whether what's in this monitor matches up with what's in
8 those claims in the '090 patent family, right?

9 A. That's my understanding.

10 Q. That's what has to be done. And commercial
11 success has nothing to do with that analysis, right?

12 A. Correct.

13 Q. All right. Nor would any extensive licensing
14 that you've talked about have anything to do with that
15 analysis, right?

16 A. I would believe that.

17 Q. All right. What the jury has to do is it's
18 got to go back there and it's got to look at the claims
19 of these patents and it's got to look at Jim Webb's
20 system and it's got to figure out whether the claims
21 require you to have a CRT in some claims, right? And
22 it -- and it's got to figure out whether you've got to
23 have a processor. It's got to figure out whether you
24 got -- whether you've got memory.

25 And they got to figure out whether you --

1 whether Mr. Webb actually, you know, whether he stored
2 this stuff, whether his monitor was designed to do this
3 stuff, right? And if they go through those claims and
4 they check all those boxes, like Dr. Rhyne did, then
5 that would mean that those patent claims aren't valid,
6 right?

7 A. Correct.

8 Q. All right.

9 MR. BROGAN: Your Honor, that's all the
10 questions I have for this witness.

11 REDIRECT EXAMINATION

12 BY MR. PLIES:

13 Q. Just a few questions. Mr. Lamm, first of all,
14 Mr. Brogan showed you where the Patent Office had lined
15 out certain pieces of paper that had been submitted,
16 including Mr. Webb's declaration and some -- some of Mr.
17 Webb's documents; do you recall that?

18 A. I recall that.

19 Q. Isn't it possible that when the examiner lined
20 out the Webb declaration and those Webb documents, that
21 the examiner did not consider them to be prior art?

22 A. I'm not familiar with the procedures of the
23 Patent Office, so I -- I really don't fully appreciate
24 what the lining out means.

25 Q. Fair enough. Let's talk about Mr. Webb a

1 little bit. How long have you known Mr. Webb?

2 A. I first met Mr. Webb in 1981 or '2, something
3 like that.

4 Q. And did you actually work on some display
5 projects together?

6 A. Quite a few.

7 Q. Did he actually assist you in your company in
8 some projects?

9 A. Yes.

10 Q. And why did you bring Mr. Webb in to help you?

11 A. Because he had the expertise in the deflection
12 and video circuitry that I didn't have, so I needed
13 his -- I needed his help.

14 Q. Now, did you also work on that project with
15 him?

16 A. Yes.

17 Q. And what aspects of the projects were you
18 responsible for?

19 A. This -- well, the first one that I called Mr.
20 Webb in on was a design where we wanted to not only just
21 have a CRT display, but we wanted to run a digital
22 signal all the way up to as close to the video circuit
23 in the monitor as we could. So we actually created
24 added a digital interface, and I did all that and
25 basically built the D to A converter that we attached on

1 a little circuit board that we attached to the actual
2 neck of the CRT computer, basically the -- I'm sorry,
3 the neck of the CRT, it's little -- right here.

4 We didn't want anything in the way in the way
5 or, you know, any transmission circuits or, you know,
6 capacitance to build up and -- and degrade the picture.
7 So getting right to the video amplifier was my part and
8 then he took it from there and then also did all the
9 deflection circuitry.

10 Q. Okay. I'm sorry, could -- could you use the
11 laser and -- again and show, using this as an example,
12 which part were you responsible for and which part was
13 Mr. Webb responsible for?

14 A. Okay. I was responsible for getting the
15 signal -- generating the signal in the computer and
16 getting it all the way into this card in a digital form.
17 At that time everybody else was doing it in analog form.

18 Q. So is it fair to say that your responsibility
19 was undoing the interfacing and the signaling and his
20 responsibility was essentially for the picture tube
21 itself?

22 A. For the picture tube and the deflection
23 circuitry and that video amplifier that's sitting over
24 here. CRTs of this day were, and I guess still are,
25 pretty difficult to -- to drive or to generate those

1 signals properly.

2 Q. And the -- I'm sorry.

3 A. And that was his expertise.

4 Q. Okay. And the patents that are in suit here,
5 do they do with the -- deal with the CRTs in which Mr.
6 Webb has -- has -- has experience in or do they deal
7 with the interfacing between the computer and the
8 display?

9 A. The claims that have been asserted basically
10 all deal with this communications down here between the
11 PC and the -- and the display controller.

12 MR. PLIES: All right. Thank you, Mr.
13 Lamm.

14 THE WITNESS: Thank you.

15 MR. BROGAN: I have no further questions,
16 Your Honor.

17 THE COURT: All right. You may step
18 down.

19 THE WITNESS: Thank you.

20 THE COURT: Ladies and gentlemen, we'll
21 go ahead we've already had one break we're going to take
22 a 15 minute break. Be back at a quarter till. Quarter
23 till.

24 (Jury out.)

25 THE COURT: All right. Court's in recess

1 until 10:45. I'll see counsel.

2 (Bench conference.)

3 THE COURT: You got one more witness?

4 MR. BLACK: Yeah. How much time do we
5 have?

6 THE COURT: 23 minutes.

7 MR. BLACK: 23?

8 THE COURT: Uh-huh.

9 MR. BLACK: I won't even use it all.

10 THE COURT: Huh?

11 MR. BLACK: I won't even use it all.

12 THE COURT: Okay. Are you going to
13 have any thing? Are y'all through?

14 MR. BROGAN: We're -- we're -- yeah,
15 we've got some cross obviously, but yes, sir.

16 THE COURT: Oh, I -- well I understand.
17 I'm not pushing that hard yet.

18 Well, as soon as I -- well then, if
19 that's true, then we ought to be through here at 11:30.

20 You're not going to have any more cross
21 on his direct or -- you're not going to have more cross
22 on his direct, are you?

23 MR. BROGAN: Probably not, Your Honor.

24 THE COURT: Okay. Then we'll immediately
25 go in and have an informal charge -- charge conference

1 then at that point. So y'all -- whoever your charge
2 people are, you can have them in and tell me where your
3 worst heartburn is.

4 MR. PARKER: Yes, sir.

5 MR. BROGAN: Thank you, Your Honor.

6 MR. BLACK: Thank you.

7 (Recess.)

8 COURT SECURITY OFFICER: All rise.

9 (Jury in.)

10 THE COURT: Please be seated.

11 All right. Who you got next?

12 MR. BLACK: Thank you, Your Honor.

13 Plaintiffs call Dr. Robert Wedig.

14 THE COURT: Come around, Dr. Wedig.

15 (Witness sworn.)

16 THE COURT: Proceed.

17 ROBERT G. WEDIG, Ph.D., PLAINTIFF'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. BLACK:

20 Q. Dr. Wedig, would you please state your full
21 name for the record?

22 A. My name is Dr. Robert G. Wedig.

23 Q. Where did you obtain your doctorate?

24 A. I obtained by doctorate from Stanford
25 University.

1 Q. And in what field?

2 A. In computer engineering.

3 Q. Are these your qualifications up on the
4 screen?

5 A. Yes, they are.

6 Q. Are you aware of any objections to your
7 qualifications to provide evidence in this case?

8 A. No.

9 Q. Okay. We're at the very end of the case here.
10 You are our last witness, and I just want to briefly ask
11 you, were you asked to provide a report in this case?

12 A. Yes, I was.

13 Q. Was it in connection with the '812 opinions of
14 Dr. Rhyne?

15 A. Yes, it was.

16 Q. Did you review Dr. Rhyne's report?

17 A. Yes, I did.

18 Q. Did you provide a rebuttal report to that?

19 A. Yes, I did.

20 Q. Did you reach any conclusion with respect to
21 validity in this case?

22 A. Yes, I did.

23 Q. What did you conclude?

24 A. I concluded that based on Dr. Rhyne's report
25 and the art that he cited, that none of the asserted

1 claims are -- are invalid.

2 Q. Of the '812 family, correct?

3 A. Of the '812 family, that's correct.

4 Q. Were you sitting through this trial?

5 A. Yes, I was.

6 Q. And has the case narrowed now that we're in
7 our final minutes?

8 A. Yes, it has.

9 Q. How has it narrowed?

10 A. There were significantly more numbers of prior
11 art references that Dr. Rhyne cited, and now he's
12 narrowed it down to basically three different
13 references, the Webb -- the Webb art, the DDM terminal,
14 and the Takahashi patent.

15 Q. Has anything you heard at trial changed your
16 opinion that the asserted claims of the '812 patent are
17 valid and that the Defendants have failed to meet their
18 burden by clear and convincing evidence?

19 A. No. Nothing's changed my opinion.

20 Q. Thank you, Dr. Wedig.

21 MR. BLACK: Pass the witness.

22 THE COURT: Okay.

23 MR. BROGAN: Actually, Your Honor, I have
24 no further questions.

25 THE COURT: Pardon?

1 MR. BROGAN: I've got no questions. I'm
2 good.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Anything further?

6 MR. BLACK: We close, Your Honor.

7 THE COURT: Anything from the Defendant,
8 subject to some documents?

9 MR. BROGAN: Yes, and one offer of proof.

10 THE COURT: And an offer of proof.

11 MR. PARKER: Before we say the word
12 close, may we approach briefly, Your Honor?

13 THE COURT: Certainly.

14 (Bench conference.)

15 MR. PARKER: Just technically before we
16 close, I wanted to make sure we're clear on the record
17 about the timing for the JMOLs --

18 THE COURT: Yes. We agreed on the
19 record. Now let's get this confirmed, that all JMOLs
20 could be filed after the close of the evidence and be
21 reduced to writing. I'm going to give you a time frame.
22 But everybody was in agreement --

23 MR. PARKER: Yes, sir.

24 THE COURT: -- that they would be deemed
25 to be timely filed, right?

1 MR. BLACK: Yes.

2 THE COURT: From the Plaintiff?

3 MR. BLACK: Yes, sir.

4 MR. PARKER: Yes, sir.

5 THE COURT: Okay. Yeah. So we're all
6 clear.

7 MR. PARKER: We're all clear. I just
8 wanted to --

9 THE COURT: I thought we were, but --

10 MR. PARKER: I just -- I'm just trying to
11 be cautious.

12 THE COURT: Okay. I'm going to -- I'm
13 about to excuse the jury. I'm going to bring them back
14 to -- at 12:30. That gives us -- we'll go in there --
15 we'll meet at 11:00 o'clock. We'll have informal charge
16 conference. I'll make whatever changes I'm going to
17 make and give you another copy. Then we'll take formal
18 objections.

19 And then we'll have closing arguments. I
20 understand somebody wants 45 minutes. Infringement is
21 not at issue. If y'all spend any of your time on
22 infringement, have at it, but 30 minutes is plenty per
23 side, so...

24 MR. PARKER: We understand.

25 MS. GUSKE: Thank you, Your Honor.

1 MR. BLACK: Thank you.

2 (Bench conference concluded.)

3 THE COURT: All right. Ladies and
4 Gentlemen, that is all the evidence that we're going to
5 hear in this case.

6 Now, I have been with -- my staff and I,
7 along with the assistance of Judge Everingham, have been
8 working on this charge that I've got to give you on the
9 law. That's -- I think we'll have everything ready to
10 start at -- listen to final arguments starting at 12:30.
11 So I'm going to release you until 12:30. It's a little
12 early lunch. Be back ready to come in at 12:30. You'll
13 hear an hour of argument total, 30 minutes from each
14 side, and then I will read you the Court's final
15 instructions.

16 Given the length of what I believe they
17 are, they're about less than half the number of pages we
18 started with, requested. I think I'm about down to an
19 hour of me talking to you, and then you'll be
20 deliberating. So, hopefully, by 2:30 -- between 2:30
21 and 3:00, you will receive -- you will be doing your
22 deliberations.

23 So I haven't heard -- you know, I'm just
24 waiting this afternoon as y'all go along as to how long
25 you want to stay. I told you that I was prepared -- I'd

1 be prepared to stay until -- as long as you want to stay
2 today, if you think you can reach a verdict today.
3 But you don't have to stay into the night. I'm not
4 telling you that. I'm just trying to communicate to you
5 that's going to be up to your choice, because I got a
6 kitchen pass from my wife that I can stay out.

7 With those instructions, do not discuss
8 the case, because it's real important that you hear my
9 final instructions before you start discussing the
10 evidence in the case and looking at it.

11 So the pancake is about cooked but not
12 quite, okay? I'll see you at 12:30. Thank you.

13 COURT SECURITY OFFICER: All rise.

14 (Jury out.)

15 THE COURT: All right. Counsel, court's
16 going to be in recess for -- I'm going to take
17 objections to the Court's charge after we've had our
18 informal charge conference and made whatever changes I
19 think are -- that I believe need to be made, and then
20 we'll do final arguments.

21 Now, I know that we've got -- only thing
22 we -- do you know what documents you want to take up?

23 MR. BROGAN: In terms of needing -- yes,
24 Your Honor. It's --

25 THE COURT: Everyone be seated, please.

1 MR. BROGAN: Your Honor, it's DX13,
2 DX8 -- I believe it's 385, 390, 397, and then lastly,
3 DX691, Your Honor.

4 THE COURT: So what -- what is it with
5 respect to those documents?

6 MR. BROGAN: Oh, I thought you wanted
7 us -- I'm sorry. They were -- the first set was used in
8 Mr. Arai's deposition, and we just wanted to make sure
9 they were entered into the record.

10 THE COURT: Any objection to those?

11 MR. BLACK: Your Honor, I'll have to
12 check. I don't have them memorized. This is -- this is
13 new.

14 THE COURT: Okay. Well, you know, I'm
15 going to leave the record open for us to -- for me to
16 consider any written -- the transcripts of the
17 depositions, those portions that were offered into
18 evidence, because it was clear to me that what was said
19 was that counsel was intending to make sure that we knew
20 what exhibits were that were talked about.

21 MR. BLACK: Yeah. I -- I --

22 THE COURT: Okay.

23 MR. BLACK: -- absolutely agree with
24 that.

25 THE COURT: I just wanted everybody to

1 know that I understand what he's saying and that I --
2 you know, I expect you to make sure to confirm that with
3 your staff, but I want you to know that the Court
4 knows -- has done this on many occasions, should there
5 be an objection, so I'll take it up then. I'm not
6 suggesting there should be.

7 MR. BLACK: Are they in already from --

8 MR. BROGAN: I just wanted to make sure
9 they were part of the record.

10 MR. BLACK: Well, anything that's
11 preadmitted that's on the admission list --

12 THE COURT: Are those on the admission
13 list?

14 MR. BROGAN: No. I think they are on the
15 admission list.

16 THE COURT: I've got a list. Why don't
17 you confirm the list before we take up anything.

18 All right. I'll see y'all in about five
19 minutes in -- okay. Then the offer of proof, what I
20 would propose that we do, the proffer of proof from
21 Mr. Brogan was, while we're making -- after I decide
22 what I'm going to do in the charge, if you'll just stand
23 by, I shouldn't think it would take but just a few
24 minutes, correct?

25 MR. BROGAN: Sure.

1 THE COURT: I'm saying once -- while
2 we're making changes to the charge, maybe we'll come out
3 and do that and get that out of the way, and then that
4 will give you time to collect your thoughts for final
5 argument.

6 Thank you.

7 MR. BROGAN: Thank you, Your Honor.

8 THE COURT: All right. I'll see y'all in
9 just a moment.

10 COURT SECURITY OFFICER: All rise.

11 (Recess.)

12 COURT SECURITY OFFICER: All rise.

13 THE COURT: All right. Please be seated.

14 All right. We're going to take up a
15 proffer of proof from Innolux.

16 Mr. Brogan?

17 MR. BROGAN: Your Honor, we offer this
18 for proof. We would have demonstrated the Sony DDM
19 Model 2800C from 1989. With it, we would have used an
20 IBM PS2 Model 55 computer from 1991 and the DDM
21 alignment software DOS version from 1989.

22 Using that equipment, we would have
23 brought the monitor up, showed the jury the display. We
24 would have had Dr. Rhyne instruct an operator of the
25 system to show that using the keyboard of the computer,

1 you could cause that displayed image to be moved from
2 side to side and then also moved up and down showing
3 that the display would move in position, and then the
4 instruction would have been given to use the keyboard to
5 cause the displayed image to shrink and then expand
6 showing that you could adjust the size of that display
7 as well.

8 And then finally, using the keyboard of
9 the computer, it would have been demonstrated that you
10 could both read data into the memory of the DDM, and
11 then thereafter, using the same keyboard, pull that data
12 back out of the DDM.

13 Thank you, Your Honor.

14 THE COURT: This was brought to the
15 Court's attention, as I recall, on Wednesday at the time
16 we broke, and I told you I'd give you a ruling on
17 Tuesday on it. Yeah, Tuesday when we broke, and I
18 indicated I'd give you a ruling orally, which I just had
19 my clerk tell you that I was not going to allow it. You
20 were not permitted to do it because of that ruling.
21 I'll -- your proffer is received. I'll be entering a
22 written order giving what I thought about overnight,
23 okay?

24 MR. BROGAN: Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 Anything further?

2 MR. BROGAN: Not from us, Your Honor.

3 THE COURT: All right. Have I got the
4 right parties here, as far as I want to get something on
5 the record about filing JMOLs in this case as far as
6 timing?

7 Can y'all deliver it?

8 MR. BROGAN: We can deliver the message,
9 Your Honor.

10 THE COURT: That's all I want to do.

11 Okay. JMOLs, written JMOLs are going to
12 be due ten days from the date of the receipt of the
13 verdict from all parties; the response will be due seven
14 days after that date; and any replies will be five days
15 after that -- after the response.

16 And the page limits found in the rules on
17 all motions applies to JMOLs. I want to caution you,
18 because of the Court's recent experience, that agreed
19 orders that usually get done on page limits will be --
20 will not necessarily be granted.

21 In other words, we had some agreements
22 that slipped by me, and, you know, I had a bunch of
23 75-page JMOLs, and I'm not going to permit that.
24 So if you negotiate an agreement, it should be specific
25 as to the number of pages. And I'm just forewarning

1 you, we're going to look at it pretty carefully. You've
2 got to be out -- it got out of hand, and I don't want it
3 to happen again.

4 Thank you.

5 So we're going to be -- told the jury to
6 be back at -- I get the Court's charge. I think we'll
7 have that, let's say, five after 12:00 for objections,
8 okay?

9 MR. BROGAN: Thank you, Your Honor.

10 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/12

Date

/s/_____
SHELLY HOLMES
Deputy Official Court Reporter
State of Texas No.: 7804
Expiration Date: 12/31/12

Date